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one, and the action of the State legislature in regard to it is conclusive. This position, however, is slightly inaccurate. In order that a State law may be a valid exercise of the police power, it must be reasonable; and the decision whether it is reasonable or not is in some cases within the province of the federal courts. The question, it is true, is not one of law; but it is a question arising under the Constitution of the United States when the statute causes a deprivation of property, and the courts cannot escape the responsibility of deciding it. In dealing with the matter, the court is in a position similar to that of an appellate court passing upon the facts found by the jury at a trial in the court below; and presumably it can properly hold a State statute invalid only when under no possibility could the statute be considered a reasonable police regulation. *Steenerson* v. *Great Northern Ry. Co.*, 72 N. W. Rep. 713 (Minn.). The Supreme Court of the United States has never explicitly stated this rule, but it seems to have followed it tacitly in all the cases hitherto decided. The principal case, at all events, falls within the rule. The Nebraska statute had no ulterior object beyond the express object of securing fair rates, which must, of course, be fair to the railroads as well as to the public; and since the statute if enforced would have been confiscatory, or practically so, no one could suppose, under the circumstances, that it was a reasonable regulation.

The effects of the decision are as yet problematical. So far as the public and the States are concerned, it can work little hardship. Although legislatures may chafe under the limitation, the public can have no just cause for complaint if railroads are allowed to make reasonable profits. The chief hardship must fall upon the federal courts in being forced to decide questions which are by nature legislative. This evil, however, may not be so great as at first sight appears; for if courts adhere to the rule of holding no statute invalid which is not hopelessly unreasonable, they will offer little encouragement for bringing cases of this class before them. There may be difficulty if parties accept the suggestion of Mr. Justice Brewer in the Circuit Court, and bring suits continually upon statutes once declared unconstitutional, in the hope that conditions may have changed since the last decision; but in practice it is hardly likely that States will leave unrepealed and unaltered upon the books statutes that have been declared invalid, upon the chance that under changed conditions they may again be brought to life. The great merit of the decision is in affirming to railroads their constitutional safeguard against legislative attacks; the question which is still left for the court to face is how far it will pass upon the reasonableness of rates imposed by a State when the rates merely limit, without virtually destroying, the profits of the corporation.

COMMON-LAW COPYRIGHT. — The literary property of a writer in his work is probably supposed by most people to be no sort of legal property at all, apart from the effect of copyright statutes. The right of an author, however, to the exclusive use of a particular form of words originated by him has been treated by the courts for a hundred and fifty years, and probably much longer, as a permanent right of property, quite distinct from the ownership of the manuscript as a physical object. In the cele-

brated case of *Millar* v. *Taylor*, 4 Burr. 2303, it was decided that at least after the statute 8 Anne, c. 19, which gave the author a copyright for a limited term of years, the effect of publication was to deprive him of this common-law copyright. The doctrine of this case has always been received with favor in America. The question as to what constitutes publication, however, still remains unsettled in many respects, as is shown by a recent case in the New York Court of Appeals. *Jewelers' Mercantile Agency* v. *Jewelers' Weekly Publishing Co.* (reported in the New York Law Journal, March 16). In this case the plaintiffs collected information concerning the jewelry trade, and printed it in books, which they distributed by lending them to all those who chose to subscribe for them under certain conditions. These conditions were that the subscriber should only have the use of the book for one year, should return it to the plaintiff at the end of that period, and should keep all information contained in it confidential. The defendants subscribed for the book and then published a part of its contents. The plaintiffs thereupon seek an injunction against such a publication as an infringement of their common-law copyright.

The plaintiffs had taken steps to secure a copyright under the United States statute, and had already deposited two copies, as required by law, in the office of the Librarian of Congress. Three out of seven judges consider that this deposit amounted to a publication of the book, whether or not the copyright under the statute was finally secured. As the deposit of the copies in the library made their contents accessible to the public, free at least from any control by the author, this view seems correct, and is a sufficient ground for the decision of the case in favor of the defendant. The result is reached by the majority of the court, however, by a different course of reasoning. They say that the distribution of copies of this book, whether by way of sale or loan, without any limit except the willingness of the public to subscribe for it under the terms offered, amounted in substance to a publication; and to recognize the common-law right of property as still existing offers an easy means by which the owners of a book may enjoy the profits of publication without giving up their perpetual exclusive rights in the work. It would seem, nevertheless, that the distribution in this case, however extensive it may have been, differed essentially from publication by putting on sale; the book was never intended to circulate at all; it was to be used only by those who took it directly from the proprietor and under his control. And if the owner of a piece of literary property can by any such scheme make a profit out of it, without clearly giving up his common-law copyright, there seems to be little reason for preventing him from doing so. It is hard enough for an author, in ordinary case of publication, to be compelled to exchange his perpetual unlimited right for a limited statutory right before he can make use of almost his only means of getting any advantage from the result of his labor.

SUBSTANTIVE LAW UNDER THE GUISE OF EVIDENCE. — The ordinary party to an action, if he feels that justice has been done, especially if it inclines to his side, generally accepts the final decision as being the sole matter of interest to him. It is not so with the judicial mind, to which the correctness of the result is of no greater interest than the principles on which that result rests. A decision recently handed down by the United States Supreme Court in the case of *Richmond & Alleghany R. R.*